

## **REMARKS**

### **Amendments**

#### ***Amendments to the Claims***

Applicant has amended the independent claims to more particularly point out what Applicant regards as the invention. No new matter has been added as a result of these amendments.

### **Rejections**

#### ***Rejections under 35 U.S.C. § 101***

#### **Claims 1-12 and 21**

Claims 1-12 and 21 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. The Examiner stated that the claimed invention only manipulates data.

Applicant respectfully directs the Examiner's attention to MPEP 2106.IV.B.2(b)(i). Applicant's method claims 1-12 group short windows in a frame of an data using a processor, such as a computer, wherein the data represents an audio signal. Thus, claims 1-12 transform an audio signal. The audio signal itself is an intangible representation of an activity outside the processor (computer), e.g., a person speaking, an orchestra playing, etc. Therefore, claims 1-12 are statutory process claims.

Applicant respectfully submits that claim 21 is statutory because it recites an apparatus in accordance with 35 U.S.C. § 112, paragraph 6. Applicant respectfully reminds the Examiner that an apparatus claim under § 112, paragraph 6 is interpreted in light of the corresponding structure disclosed in the specification. The structure corresponding to claim 21 is the short window grouping determinator 116 of Figure 1 as described in paragraph 32 of Applicant's specification. The short window grouping determinator 116 is part of an encoding system 100 as described in paragraphs 23-29. To perform the grouping of the short windows, the short window grouping determinator 116 executes the process illustrated by blocks 602, 606, 608 and 610 of Figure 6, which correspond to the elements of claim 21. Figure 6 is described in paragraphs 55-61. Thus,

claim 21 is directed to a specific combination of hardware and software/firmware and therefore is statutory.

Accordingly, Applicant respectfully submits that the invention as claimed in claims 1-12 and 21 is statutory subject matter and respectfully request the withdrawal of the rejection of the claims under 35 U.S.C. § 101.

### ***Rejections under 35 U.S.C. § 103***

#### **Claims 1-4, 9, 11 and 13-21**

Claims 1-4, 9, 11 and 13-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Domazet, et al. (Advanced Software Implementation of MPEG-4 AAC Audio Encoder) in view of Araki, U.S. Patent 6,456,963. Araki qualifies as prior art only under 35 U.S.C. § 102(e) because it issued after Applicant's effective filing date. Applicant does not admit that Araki is prior art and reserves the right to challenge the reference at a later date.

Domazet discloses the grouping together of short blocks (windows) of an audio signal if their energies do not differ by more than a threshold amount.

Araki discloses the grouping of together of short blocks of an audio signal based on their perceptual entropies.

However, neither Domazet nor Araki teaches or suggests grouping short windows using an offset energy value for each short window in a frame and an mean offset energy value for the frame as claimed in independent claims 1, 13, 17 and 21. Therefore, the combination cannot be properly interpreted as disclosing the claimed elements.

Accordingly, the combination cannot render obvious Applicant's invention as claimed in claims 1-4, 9, 11, and 13-21, and Applicant respectfully requests the withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) over the combination of Domatz and Araki.

#### **Allowable Subject Matter**

Claims 5-9, 10 and 12 were not rejected over art. Thus, Applicant assumes the Examiner considers claims 5-9, 10 and 12 allowable once their rejection under 35 U.S.C. § 101 is overcome.

### SUMMARY

Claims 1-21 are currently pending. In view of the foregoing amendments and remarks, Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Sue Holloway at (408) 720-8300 x309.

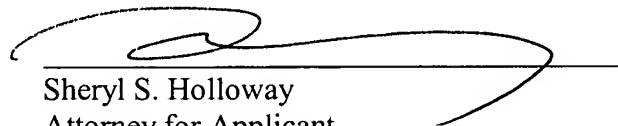
### Deposit Account Authorization

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

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